From: greg@dignus.com@inetgw
To: Microsoft ATR
Date: 1/23/02 3:07pm
Subject: Microsoft Settlement

I disagree with the "revised proposed final settlement."

The prohibited conduct as it applies to OEMs has already been determined to be illegal, so prohibiting it does not change MicroSoft's position in any way. They have been found in violation and simply restating the law to them will not impact them. The situation must be altered such that MS is no longer in a position to exert this form of pressure on OEMs.

The requirement of the publishing of various MicroSoft APIs (III.D) through MS Developer Network is also incorrect. It allows, primarily, MicroSoft to make arbitrary demands (of money, identification, and technological capability) before you are allowed to view any of their information. Also, they already publish the overwhelming majority of their APIs. The trouble is that their publications are lies ("in error", "mistaken", or "outdated", the result is the same: only MicroSoft knows how it really works). Forcing more publications will not cause MicroSoft to cease distorting standards with their current policy of "embrace and extend". It will not eliminate MicroSoft's defacto standard status.

Such language as "timely manner" is completely unacceptable in a contract with MicroSoft. MS has, in the past, demonstrated an eagerness to act in bad faith. No vaguaries of language are acceptable, then. A distinct number of days needs to be allowed before they are found in violation, and once they are in violation a clear, simple, and financially lethal course of action should be described such that MS has no way out but to follow the contract. I.e., if MS ships Windows 2002 before it provides API documentation, you must not allow them to provide it in a "timely manner" before beginning to decide whether anything should be done. Once a specific number of days elapses (say 5) from release, MS should immediately be found in violation of the agreement, their current advertising budget must be reappropriated to informing the public of the crimes MS has commited, and their product must be removed from the shelves until such time as compliance is established. Anything less and MS will NOT act in a timely manner no matter how lax your definition. They will spend years, then, in litigation to decide what should be done to them for a violation that, by the time it is settled, is irrelevant. You may note that the current lawsuit originated with Netscape, and it is nowhere near finished even though Netscape long ago disappeared.

III.E is similarly flawed. Their email product, for example, operates with protocols described in already public "Request For Comments" publications (RFCs). When asked to publish their protocols MS will simply republish these documents that are already available. However, MS does not simply follow the standard described in these documents, they embellish and distort in order to make their product more popular and then, over time, no longer interoperable. They will, in bad faith, pretend that this is an accident, or necessary for proper software evolution, but it will happen nonetheless.
The differences between the currently published standards and the way MicroSoft software operates are minor enough that it would take a jury of programmers to decide if MicroSoft is in compliance with its own documentation, but major enough that it renders operability with MicroSoft software nearly impossible. By the time any technical audit is performed to prove that an MS product is not in compliance, the product will already have been adopted in the marketplace. Once convicted they will simply release a new version of the product that complies on the points in question and features new "accidental" features that again violate the standard.

MicroSoft will act in bad faith. A "be good" document will not change anything. Punishment is imperative. My recommendation is that MicroSoft lose all intellectual property rights.

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